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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,166	07/11/2001	Niko Drakoulis	AKI-100-B	2153
7590 10/06/2004			EXAMINER	
YOUNG & BASILE, P.C. Suite 624 3001 West Big Beaver Road Troy, MI 48084-3107			FAULK, DEVONA E	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,166

Applicant(s)

DRAKOULIS ET AL.

Examiner

Devona E. Faulk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 12 and 14 is/are rejected.
- 7) ☒ Claim(s) 7-10 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1-13** rejected under the judicially created doctrine of double patenting over claims 1-9,12,16-19 and 22 of U. S. Patent No. 6,256,303 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Claims 1-13 of application 09/903166 and claims 1-9,12,16-19 claim a wireless signal transmission apparatus having common recited elements. Claims 1-9,12,16-19 are narrower than claims 1-13 of 09/903166. thus anything that would read on the claim language of U.S Patent 6,256,303 would infringe on the claims of the pending application.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

3. **Claim 14** recites the limitation "transmission by the second transmitter" in lines 5-6. A second transmitter was not recited in claim 1, upon which claim 14 is dependent. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-6,12** are rejected under 35 U.S.C. 102(b) as being anticipated by Borchardt et al. (U.S. Patent 5,666,658).

Regarding **claim 1**, Borchardt discloses a wireless signal transmission system for use with a signal source providing first frequency signals, the signal transmission apparatus comprising a first transmitter adapted to be coupled to a signal source for receiving first frequency signals, the first transmitter connected to an antenna (22, Figure 1; 70, Figure 2A; column 5-15,25-30; a first oscillator (200; column 3, lines 35-49; column 14, lines 25-35) in the first transmitter producing a high frequency carrier signal (column 10; lines 15-19; column 13, line 66-column 14, line 35); means for combining the high frequency carrier signal with the first frequency signals to form a first modulated signal transmitted by the antenna (200,66; column 14, lines 24-35); a first receiver (Figure 7, column 14, lines 44-45) remote from the first receiver for converting the first modulated signal from the high frequency carrier signal of the

first transmitter to a second modulated signal including a lower frequency carrier signal and the first frequency signal (column 14, line 61-column 15, line 8).

All elements of **claim 2** are comprehended by claim 1 (column 14, lines 24-30).

All elements of **claim 3** are comprehended by claim 2 (column 14, lines 25-35).

All elements of **claim 4** are comprehended by claim 2 (column 14, lines 24-35).

All elements of **claim 5** are comprehended by claim 1 (column 15, lines 15-40).

All elements of **claim 6** are comprehended by claim 5 (column 13, line 66- column 14, line 40).

All elements of **claim 12** are comprehended by claim 1 (column 7, lines 51-55).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchardt et al. (U.S. Patent 5,666,658) in view of Giffin et al. (U.S. Patent Application 2003/0005138).

Claim 11 claims the apparatus of claim 1 wherein the signal source comprises a computer generated audio signal stream. As stated above apropos of claim 1, Borchardt meets all elements of that claim. Therefore, Borchardt meets all elements of claim 11, with the exception of the claimed matter. Borchardt gives examples of what the signal source can be but does exclude the signal sources to those examples (column 7, lines 50-55). Griffin discloses a wireless streaming audio transmission system having a computer generated audio signal stream

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as the signal source. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use Giffin's concept of a computer-generated audio signal stream as a signal source in order to provide an audio player that is free of the need for local storage of music files.

Claim Objections

8. Claims 7-10, 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 703-305-4359. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

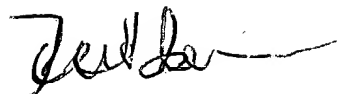
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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FORESTER W. ISEN
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